

108TH CONGRESS
2D SESSION

S. 2108

To amend the Federal Food, Drug, and Cosmetic Act to ensure that consumers receive information about the nutritional content of restaurant food and vending machine food.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2004

Mr. HARKIN (for himself, Mr. KENNEDY, Mr. LIEBERMAN, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Federal Food, Drug, and Cosmetic Act to ensure that consumers receive information about the nutritional content of restaurant food and vending machine food.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Menu Education and
5 Labeling Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) research continues to reveal that—

1 (A) there is a strong link between diet and
2 health; and

3 (B) diet-related diseases start early in life;

4 (2)(A) increased caloric intake is a key factor
5 contributing to the alarming increase in obesity in
6 the United States;

7 (B) according to the Centers for Disease Con-
8 trol and Prevention, $\frac{2}{3}$ of American adults are over-
9 weight or obese, and the rates of obesity have dou-
10 bled in children and tripled in teens since 1980;

11 (C) obesity increases the risk of diabetes, heart
12 disease, stroke, several types of cancer, and other
13 health problems; and

14 (D) the annual cost of obesity to families, busi-
15 nesses, and governments in the United States is
16 \$117,000,000,000;

17 (3) over the past 2 decades, there has been a
18 significant increase in the number of meals prepared
19 or eaten outside the home, with an estimated $\frac{1}{3}$ of
20 calories and almost half of total food dollars being
21 spent on food purchased from or eaten at res-
22 taurants and other food-service establishments;

23 (4) while nutrition labeling is currently required
24 on most processed foods, nutrition information is re-

1 quired for restaurant food only if a nutrient content
2 or health claim is made for a menu item;

3 (5)(A) about 75 percent of adults report using
4 food labels on packaged foods, which are required by
5 subsections (q) and (r) of section 403 of the Federal
6 Food, Drug, and Cosmetic Act (21 U.S.C. 343); and
7 (B) the use of food labels is associated with eat-
8 ing more healthful diets, and approximately half of
9 people report that the nutrition information on food
10 labels has caused them to change their minds about
11 buying a food product;

12 (6)(A) it is difficult for consumers to limit their
13 intake of calories at restaurants, given the limited
14 availability of nutrition information and the popular
15 practice of many restaurants of providing foods in
16 larger-than-standard servings and super-sized por-
17 tions; and

18 (B) studies show that people eat greater quan-
19 tities of food when they are served more;

20 (7)(A) available information suggests that con-
21 sumers would like to be provided nutritional infor-
22 mation at restaurants; and

23 (B) specifically, studies show that consumers
24 would like nutrition information to be provided at
25 the time of ordering their food at a restaurant, at

1 the point of the sale, so as to enable consumers to
 2 make an educated decision on what to order; and

3 (8) a call to action from the Surgeon General
 4 and Secretary of Health and Human Services rec-
 5 ommends that, to reduce the incidence of obesity,
 6 there be increased availability of nutrition informa-
 7 tion for foods eaten and prepared away from home.

8 **SEC. 3. NUTRITION LABELING OF RESTAURANT FOODS.**

9 Section 403(q)(5) of the Federal Food, Drug, and
 10 Cosmetic Act (21 U.S.C. 343(q)(5)(A)(i)) is amended—

11 (1) in clause (A)—

12 (A) in subclause (i), by inserting “except
 13 as provided in clauses (H) and (I),” before
 14 “which” the first place it appears; and

15 (B) in subclause (ii), by inserting “except
 16 as provided in clauses (H) and (I),” before
 17 “which” the first place it appears; and

18 (2) by adding at the end the following:

19 “(H) RESTAURANTS AND RETAIL FOOD ESTABLISH-
 20 MENTS.—

21 “(i) IN GENERAL.—Except for food described in
 22 subclause (iii), in the case of food that—

23 “(I) is served in a restaurant or similar re-
 24 tail food establishment; or

1 “(II) is processed and prepared primarily
 2 in a retail establishment;
 3 that is part of a chain with 20 or more locations
 4 doing business under the same trade name (regard-
 5 less of the type of ownership of the locations), the
 6 restaurant of the establishment shall disclose the in-
 7 formation described in subclause (ii).

8 “(ii) INFORMATION REQUIRED TO BE DIS-
 9 CLOSED.—Except as provided in clause (iii), the es-
 10 tablishment shall disclose—

11 “(I)(aa) in a statement adjacent to the
 12 name of the food on any menu listing the food
 13 for sale, or by any other means approved by the
 14 Secretary, the number of calories, grams of
 15 saturated fat plus trans fat, and milligrams of
 16 sodium contained in a serving of the food, as
 17 offered for sale, in a clear and conspicuous
 18 manner; and

19 “(bb) information, specified by the Sec-
 20 retary by regulation, designed to enable the
 21 public to understand, in the context of a total
 22 daily diet, the significance of the nutrition in-
 23 formation that is provided; and

24 “(II) in a statement adjacent to the name
 25 of the food on any menu board or other sign

listing the food for sale, or by any other means approved by the Secretary, the number of calories contained in a serving of the food, as offered for sale, in a clear and conspicuous manner.

“(iii) NONAPPLICABILITY TO CERTAIN FOOD.—

This clause does not apply to—

“(I) items that are not listed on a menu or menu board (such as condiments, other items placed on the table or counter for general use, and items from salad bars or other self-service facilities); or

“(II) daily specials, temporary menu items, or other irregular menu items, as specified by the Secretary by regulation.

“(iv) SELF-SERVICE FACILITIES.—

“(I) IN GENERAL.—In the case of food sold at a salad bar, buffet line, cafeteria line, or similar self-service facility, a restaurant or other establishment shall place a sign that lists calories per standard serving adjacent to the name of each food offered.

“(II) VENDING MACHINES.—In the case of an article of food sold from a vending machine or other arrangement that does not permit a

1 prospective purchaser to examine the article so
 2 as to be able to read a statement affixed to the
 3 article as required under subclause (I) before
 4 purchasing the article, a restaurant or other es-
 5 tablishment (or, in the case of a vending ma-
 6 chine that is owned and operated by a vending
 7 machine operator, the vending machine oper-
 8 ator) shall provide a conspicuous sign, in close
 9 proximity to the article, identifying the food
 10 and including a statement disclosing the num-
 11 ber of calories contained in the article.

12 “(v) VOLUNTARY PROVISION OF NUTRITION IN-
 13 FORMATION; STATE REGULATION OF NUTRITION IN-
 14 FORMATION FOR RESTAURANT FOOD.—

15 “(I) RETAIL FOOD ESTABLISHMENTS.—
 16 Nothing in this clause precludes a restaurant or
 17 similar retail food establishment from providing
 18 additional nutrition information, voluntarily, if
 19 the information complies with the nutrition la-
 20 beling requirements contained in this subpara-
 21 graph.

22 “(II) STATE OR LOCAL REQUIREMENTS.—
 23 Nothing in this clause precludes a State or po-
 24 litical subdivision of a State from requiring that
 25 a restaurant or similar food establishment pro-

1 vide nutrition information in addition to that
2 required under this clause.

3 “(vi) REGULATIONS.—

4 “(I) PROPOSED REGULATION.—Not later
5 than 1 year after the date of enactment of this
6 clause, the Secretary shall promulgate proposed
7 regulations to carry out this clause.

8 “(II) CONTENTS.—The regulations shall
9 allow for the variations in serving sizes and in
10 food preparation that can reasonably be ex-
11 pected to result from inadvertent human error,
12 training of food service workers, and other fac-
13 tors.

14 “(III) FINAL REGULATIONS.—Not later
15 than 2 years after the date of enactment of this
16 clause, the Secretary shall promulgate final reg-
17 ulations to implement this clause.

18 “(IV) FAILURE TO PROMULGATE FINAL
19 REGULATIONS BY REQUIRED DATE.—If the Sec-
20 retary does not promulgate final regulations
21 under item (III) by the date that is 2 years
22 after the date of enactment of this clause—

23 “(aa) the proposed regulations issued
24 in accordance with item (I) shall become

1 effective as the final regulations on the day
 2 after that date; and

3 “(bb) the Secretary shall publish in
 4 the Federal Register notice of the final
 5 regulations.

6 “(I) VENDING MACHINES.—

7 “(i) IN GENERAL.—In the case of an article of
 8 food sold from a vending machine that—

9 “(I) does not permit a prospective pur-
 10 chaser to examine the article so as to be able
 11 to read a statement affixed to the article before
 12 purchasing the article; and

13 “(II) is operated by a person that is en-
 14 gaged in the business of owning and operating
 15 20 or more vending machines;

16 the vending machine operator shall provide a con-
 17 spicuous sign, in close proximity to the article, iden-
 18 tifying the food and including a statement disclosing
 19 the number of calories contained in the article.

20 “(ii) VOLUNTARY PROVISION OF NUTRITION IN-
 21 FORMATION; STATE REGULATION OF NUTRITION IN-
 22 FORMATION FOR VENDING MACHINES.—

23 “(I) VENDING MACHINE OPERATORS.—

24 Nothing in this clause precludes a vending ma-
 25 chine operator from providing additional nutri-

tion information, voluntarily, if the information
complies with the nutrition labeling require-
ments contained in this subparagraph.

“(II) STATE OR LOCAL REQUIREMENTS.—

Nothing in this title precludes a State or polit-
ical subdivision of a State from requiring that
a vending machine operator provide nutrition
information in addition to that required under
this clause.

“(iii) REGULATIONS.—

“(I) PROPOSED REGULATION.—Not later

than 1 year after the date of enactment of this
clause, the Secretary shall promulgate proposed
regulations to carry out this clause.

“(II) FINAL REGULATIONS.—Not later

than 2 years after the date of enactment of this
clause, the Secretary shall promulgate final reg-
ulations to implement this clause.

“(III) FAILURE TO PROMULGATE FINAL

REGULATIONS BY REQUIRED DATE.—If the Sec-
retary does not promulgate final regulations
under item (II) by the date that is 2 years after
the date of enactment of this clause—

“(aa) the proposed regulations issued

in accordance with item (I) shall become

1 effective as the final regulations on the day
2 after that date; and

3 “(bb) the Secretary shall publish in
4 the Federal Register notice of the final
5 regulations.”.

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